

Message Text

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ACTION STR-07

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COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05
SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01
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TO SECSTATE WASHDC PRIORITY 8774
INFO AMEMBASSY BRUSSELS

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E.O. 11652: N/A
TAGS: MTN, ETRD
SUBJECT: MTN: INFORMAL PLURILATERAL MEETING ON DRAFT
- STANDARDS CODE, APRIL 17-21, 1978

1. SUMMARY: INFORMAL MEETING ON STANDARDS CODE WAS
USEFUL, WITH EC TABLING TEXTUAL LANGAGE ON THEIR
PROPOSAL REGARDING LEVELS OF OBLIGATION AND NORDICS TAB-
LING COMPREHENSIVE PROPOSAL ON CERTIFICATION SYSTEMS.
GREATEST DISAPPOINTMENT WAS EC UNWILLINGNESS TO ENGAGE
IN DRAFTING EXERCISE ON DISPUTE SETTLEMENT. A CON-
STRUCTIVE REVIEW OF SPECIAL AND DIFFERENTIAL TREATMENT
PROPOSALS APPEARED TO NARROW VIEWS ON THE TOPIC, AND
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THE CHAIRMAN CHARGED DELS TO WORK OUT POSSIBLE COMPRO-
MISE TEXT ON A BILATERAL BASIS. ON FRINGE OF MEETING,
U.S. DEL EXPLORED POSSIBLE BILATERAL WORK PROGRAM WITH
CANADA AND EC TO EXPEDITE STANDARDS WORK. NEXT MEETING
OF INFORMAL GROUP IS SET FOR THE WEEK OF MAY 22 WITH
POSSIBLE SUBGROUP MEETING WEEK OF MAY 29. END SUMMARY.

2. INFORMAL GROUP(US, CANADA, JAPAN, NORDICS, EC, SWITZERLAND, AUSTRALIA, MEXICO, BRAZIL, HUNGARY) MET APRIL 17-21 TO REVIEW PROGRESS AND DISCUSS MAJOR OUTSTANDING ISSUES IN THE DRAFT STANDARDS CODE. SESSIONS WERE CHAIRED BY GATT SECRETARIAT CHAIRMAN WILLIAMS. MAJOR TOPICS DISCUSSED INCLUDED DISPUTE SETTLEMENT (D/S), EC PROPOSAL ON LEVELS OF OBLIGATION, NORDIC PROPOSAL FOR REDRAFT OF CODE SECTIONS 5-15 REGARDING CERTIFICATION SYSTEMS, AND SPECIAL AND DIFFERENTIAL TREATMENT (S&D) FOR DEVELOPING COUNTRIES.

3. DISPUTE SETTLEMENT: GATT SECRETARIAT CHAIRMAN INTRODUCED THE TOPIC AND DREW ATTENTION TO THE AGREED STANDARD'S SUBGROUP OUTLINE ON D/S AND SUBSEQUENT D/S TEXT DEVELOPED IN THE GOVERNMENT PROCUREMENT (GP) SUBGROUP. US DEL (NEWKIRK) TAKING LEAD, SUGGESTED THAT TIME HAD COME TO FILL OUT STANDARDS OUTLINE WITH CONTRACTUAL LANGUAGE, STRESSING IMPORTANCE OF AN EFFECTIVE D/S MECHANISM FOR THE OPERATION OF THE CODE. EC (SCHLOSSER) CONCURRED IN IMPORTANCE OF D/S TEXT, BUT NOTED UNIQUE CHARACTERISTICS OF STANDARDS CODE IN WHICH TECHNICAL DISPUTES ARE LESS LIKELY TO BE CLEAR CUT THAN IN OTHER NTM CODES. EXPERIENCE IN THE OTHER NTM AREAS ON D/S, INCLUDING GP AND FRAMEWORK, WOULD ALSO BENEFIT WORK ON STANDARDS TEXT. EC REP, HOWEVER, CONCLUDED THAT THE WEEK SHOULD BE DEVOTED TO ONLY A GENERAL DISCUSSION OF LIMITED OFFICIAL USE

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ISSUES AND NOT TO A DRAFTING EXERCISE.

4. CANADA (DENIS) SHARPLY ATTACKED EC'S WILLINGNESS, CALLING IT "SHOCKING AND DISAPPOINTING" FOR EC TO TAKE SUCH A POSITION AT THIS STAGE IN THE MTN. CRITICAL RELATIONSHIP OF D/S PROVISIONS TO THE CODE'S APPLICATION, AS WELL AS CERTAIN PROPOSALS ON THE TABLE (I.E., THE EC PROPOSAL), LEFT MANY QUESTIONS OPEN IF NO SUBSTANTIVE D/S PROVISIONS WERE IN PLACE. US FOLLOWED UP BY AGREEING WITH EC'S RATIONALE BUT DISAGREEING WITH THZIR CONCLUSION. GP TEXT HAD BEEN DEVELOPED TO MAXIMUM EXTENT POSSIBLE AT THIS STAGE AND STANDARDS CODE WORK WOULD FALL BEHIND IF SIMILAR PROGRESS WERE NOT ACHIEVED AT THIS SESSION. AUSTRALIA (SPENCER) CITED DESIRE OF COUNTRIES NOT PARTICIPATING IN GP WORK TO ALSO HAVE OPPORTUNITY, WHICH STANDARDS MEETING AFFORDED, TO PARTICIPATE IN D/S DRAFTING EXERCISE. IN AN EFFORT TO MOVE DISCUSSION FORWARD, US RELUCTANTLY INTRODUCED A NON-PAPER ON D/S BASED UPON THE GP TEXT AS MODIFIED BY TPSC 78-47.

5. TOPIC WAS REVISITED AT FINAL GROUP SESSION. EC (ABBOTT) (SCHLOSSER WAS ILL AND CONFINED TO HIS HOTEL) ASKED GROUP TO HAVE A GENERAL DISCUSSION OF THE UNIQUE

ASPECTS OF POTENTIAL STANDARDS DISPUTES BEFORE SETTING ABOUT DRAFTING OF TEXT. FOR EXAMPLE, STANDARDS DISPUTES MAY INVOLVE HIGHLY COMPLEX TECHNICAL MATTERS FOR WHICH NO CLEAR CUT ANSWER CAN BE FOUND, ESPECIALLY WHERE MATTERS OF SAFETY OR ENVIRONMENT ARE INVOLVED WHERE EXPERTS MAY HAVE LEGITIMATE DIFFERENCES OF OPINION. JAPAN (TAMORI), AUSTRALIA, AND NORDICS (STALBERG) GENERALLY SUPPORTED THIS APPROACH, BUT STALBERG SUGGESTED THAT DRAFTING EXERCISE SHOULD PROCEED SIMULTANEOUSLY. CANADA BELIEVED THAT CODE IS AIMED MORE AT TRADE POLICY IMPLICATIONS OF STANDARDS AND CHIDED EC FOR OVEREMPHASIZING THE DIFFERENCE BETWEEN STANDARDS AND OTHER NTM AREAS. US PRODDDED EC TO REAFFIRM THEIR COMMITMENT TO DRAFT A D/S TEXT AS AGREED AT THE PREVIOUS STANDARDS SUBGROUP MEETING

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(MTN/NTM/W/144) AND QUERIED AS TO THE SPECIFIC PROBLEMS

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EC HAD IN MIND. CHAIRMAN DIRECTED DISCUSSION ON BASIS OF GP D/S TEXT, ALTHOUGH MOST DELS BASED THEIR COMMENTS ON THE U.S. NON-PAPER. EC DECLARED IT WAS "NOT GOING BACKWARDS" BUT HAD CERTAIN RESERVATIONS. FOR EXAMPLE, PANEL PROCEDURES MAY HAVE TO BE LOOSER TO ACCOMMODATE THE NEED FOR EXTRA TECHNICAL EXPERTISE REQUIRED IN STANDARDS DISPUTES. U.S. SUGGESTED THAT IF AREA OF DISPUTE FELL MORE IN A TRADE POLICY FIELD, EXPERTS SHOULD BE CHOSEN FROM THAT AREA, WHILE TECHNICALLY ORIENTED STANDARDS EXPERTS COULD BE FOUND IF THE DISPUTE INVOLVED A MORE TECHNICAL ASPECT. EC SPECULATED THAT A STATEMENT MIGHT BE INCLUDED IN THE MULTILATERAL REVIEW AND PANEL SECTIONS RECOGNIZING LIMITATIONS FOR RESOLUTION OF TECHNICAL STANDARDS ISSUES, I.E., POSSIBILITY THAT PANEL MAY COME TO NO CONCLUSION. TIME TABLE FOR RESOLUTION LIMITED OFFICIAL USE

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TION OF SHOULD NOT BE TOO RIGOROUS, IN EC VIEW, SINCE TECHNICAL ISSUES COULD REQUIRE YEARS OF STUDY. IN RESPONSE TO U.S. OBSERVATION ON NEED FOR TIME LIMIT TO ENSURE THAT A DISPUTE IS ADDRESSED IN A TIMELY FASHION, EC OPINED THAT THE CODE COULD INCORPORATE LOOSE TIME LIMITS INITIALLY ON A TRIAL BASIS. THESE COULD BE TIGHTENED AS EXPERIENCE WARRANTED. CANADA NOTED THAT TIME LIMITS PROTECTED OTHER PARTICIPANTS AGAINST ABUSE OF THE D/S SYSTEM (E.G., FOOTDRAGGING) WHILE JAPAN SUPPORTED EXPEDITIOUS PROCEDURES WITHOUT SPECIFIC TIME LIMITS. EC ALSO PROPOSED THAT ANY SANCTIONS BE CONTAINED WITHIN PROVISIONS OF THE CODE. HUNGARY PROPOSED THAT A MEDIATOR BE ESTABLISHED BEFORE THE CASE IS SENT TO A PANEL WITH SWISS (LEMPEN) NOTING SIMILARITY ON THIS POINT WITH THEIR PROPOSAL. JAPAN FAVORED PANEL ROLE AS AN INTERMEDIARY TO SETTLE DISPUTES ON A BILATERAL BASIS. JAPAN CRITICIZED INFLEXIBILITY OF SELECTION OF PANELISTS FROM A STANDING LIST OF EXPERTS, BUT SWISS FAVORED IT AS AN EXPEDITIOUS WAY TO START PANEL PROCEEDINGS. SWISS AND BRAZIL (MEDERIOS) FAVORED ADHERENTS' RIGHTS TO A PANEL WITH BRAZIL AND MEXICO (DELGADO) STRESSING THE NEED FOR LDC EXPERTS ON THE PANEL. EC NOTED THAT INITIATION OF PANEL PROCEEDINGS SHOULD BE A COMMITTEE DECISION. AT REQUEST OF EC, THE CHAIRMAN MAY DRAFT AN INFORMAL SUMMARY OF POINTS MADE REGARDING UNIQUE ASPECTS OF STANDARDS IN D/S. GROUP AGREED TO BASE FURTHER DISCUSSION ON THE GP TEXT AT THE NEXT MEETING.

6. EC PROPOSAL: THE EC INTRODUCED ITS PROPOSED TEXT ON LEVELS OF OBLIGATION STATING THAT THE BASIC THRUST WAS WITH REGARD TO STANDARDS/CERTIFICATION BODIES WITHIN

TERRITORIES OF ADHERENTS, NOT REGIONAL OR INTERNATIONAL
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ORGANIZATIONS. U.S. AND CANADA CHALLENGED THIS APPROACH, WITH U.S. ASSERTING THAT KEY FACTOR WAS POSSIBILITY FOR INFLUENCING COMPLIANCE OF THE ORGANIZATION WITH THE CODE'S OBLIGATION AND NOT THEIR GEOGRAPHIC LOCATION. EC RESPONDED THAT ADHERENTS WOULD NOT HAVE THE SAME MEANS FOR INFLUENCING ACTIONS OF REGIONAL OR INTERNATIONAL BODIES AS THEY WOULD FOR ORGANIZATIONS LOCATED WITHIN THEIR TERRITORY. THEREFORE, "BEST EFFORTS" COULD NOT BE IMPROVED UPON. IN RESPONSE TO OTHER U.S. AND CANADIAN QUERIES, EC PROVIDED ADDITIONAL CLARIFICATION OF ITS PROPOSAL. SCHLOSSER POINTED OUT THAT OBLIGATIONS OF THE LOCAL GOVERNMENT BODIES WOULD BE NOT GREATER THAN THOSE OF THE FEDERAL GOVERNMENT, AND EXPLAINED THAT UNIQUE FACTORS AFFECTING A PARTICULAR REGION COULD JUSTIFY MORE RIGOROUS STANDARDS. INSPIRATION FOR THE EC'S PROPOSAL, ACCORDING TO SCHLOSSER, CAME FROM THEIR BELIEF THAT GATT ARTICLE XXIV:12 IS INSUFFICIENT. ACCORDING TO EC INTERPRETATION, IF A CONTRACTING PARTY USES "BEST EFFORTS", IT HAS FULFILLED ITS GATT OBLIGATION REGARDLESS OF THE EFFECTIVENESS OF THOSE EFFORTS TO RESOLVE A TRADE PROBLEM. AUSTRALIA POINTED TO GATT ARTICLE XXIII NOTION OF NULLIFICATION AND IMPAIRMENT BENEFITS WHICH COULD HAVE BEEN REASONABLY EXPECTED TO DERIVE FROM THE TRADE AGREEMENT, NOTING THAT "BEST EFFORTS" IS A BASIS FOR SUCH EXPECTATION. EC RETORTED THAT IT WANTED ITS REASONABLE EXPECTATIONS TO BE SPELLED OUT IN THE CODE'S TEXT. IN ASCERTAINING NULLIFICATION IMPAIRMENT, EC CONCEDED THAT CONCEPT OF TRADE DAMAGE MIGHT BE EMPLOYED. CANADA AND SWITZERLAND WERE CRITICAL OF THE ABSOLUTE JUDGEMENTAL NATURE OF THE EC'S PROPOSAL ("FAILURE. . .SHALL BE DEEMED"). NORDICS, WHO SUPPORTED GENERAL EC IDEA, NOTED IMPRECISENESS OF REFERENCES TO CODE'S OPERATIONAL PROVISIONS. CANADA OBJECTED WHEN EC OPINED THAT PROVISIONS REFLECTING THEIR PROPOSAL COULD BE PUT INTO OPERATIVE SECTIONS OF THE CODE. CANADA WAS JOINED BY SWISS IN STATING THAT D/S WAS THE ONLY LIMITED OFFICIAL USE

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PLAUSIBLE PLACE TO DEAL WITH EC PROPOSAL. SCHLOSSER INVITED FURTHER COMMENTS AND PROPOSALS TO CLARIFY THE EC TEXT.

7. NORDIC PROPOSAL: NORDICS INTRODUCED A MAJOR PRO-

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POSAL TO CONDENSE SECTIONS 5 THROUGH 15 REGARDING CERTIFICATION SYSTEMS. ADOPTION OF NEW TERMS IN THE CODE'S ANNEX, INCONSISTENCIES WITH THE TEXT, REDUNDANCIES, UNCLEAR OBLIGATIONS, AND CONFUSING NATURE OF PREVIOUS PROVISIONS WERE PRIMARY REASONS FOR THE NORDIC INITIATIVE. WHILE GROUP WELCOMED NORDIC EFFORT TO SHORTEN AND CLARIFY THE TEXT, NUMEROUS TECHNICAL QUESTIONS WERE RAISED. IN COURSE OF DISCUSSION TWO MAJOR SUBSTANTIVE ISSUES WERE TOUCHED UPON. NORDIC PROPOSAL ATTEMPTS TO SOLVE THE PROBLEM OF NATIONAL TREATMENT REGARDING PARTICIPATION IN CERTIFICATION SYSTEMS BY DROPPING THE CONCEPT OF "PARTICIPATION" IN FAVOR OF THE IDEA OF GRANTING SUPPLIER "ACCESS" TO CERTIFICATION SYSTEMS. ACCESS WOULD BE GRANTED UNDER CONDITIONS NO LESS FAVORABLE THAN THOSE ACCORDED TO SUPPLIERS OF DOMESTIC PRODUCTS. UNDER ISO PROPOSED DEFINITION, "ACCESS" MEANS "OBTAINING OF CERTIFICATION UNDER THE RULES OF THE SYSTEM". NORDIC PROPOSAL ALSO DROPS OBLIGATIONS REGARDING MEMBERSHIP, INCLUDING CRITERIA FOR MEMBERSHIP, IN INTERNATIONAL

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CERTIFICATION SYSTEMS. THEY ARE SKEPTICAL ABOUT THE PRACTICALITIES OF SUCH AN ISSUE BEING ADDRESSED WITHIN THE STANDARDS CODE SINCE SUCH ISSUES USUALLY INVOLVE EXTENSIVE DISCUSSION AND NEGOTIATION. IN RESPONSE TO CANADIAN QUESTION, NORDICS SAID THAT THEIR PROPOSAL APPLIED ONLY TO CERTIFICATION SYSTEMS AND NOT TO "ARRANGEMENTS". CERTIFICATION ARRANGEMENTS, E.G. MUTUAL ACCEPTANCE OF TESTS, EXISTS BETWEEN NATIONAL CERTIFICATION SYSTEMS AND WOULD CREATE A TRADE OBSTACLE ONLY TO THE EXTENT SUCH OBSTACLES WERE CREATED BY NATIONAL SYSTEMS. DELS PROMISED TO REFLECT ON NORDIC PROPOSAL AND DISCUSS IT FURTHER AT THE NEXT SESSION.

8. NATIONAL TREATMENT FOR TECHNICAL REGULATIONS/STANDARDS: IN COURSE OF REVIEW OF THE NORDIC PROPOSAL, U.S. DEL QUERIED WHETHER THE NATIONAL TREATMENT CONCEPT SHOULD BE REFLECTED IN OTHER CODE PROVISIONS IN ADDITION TO THOSE IN THE SECTIONS COVERING CERTIFICATION SYSTEMS. NORDICS WERE ONLY DELS TO COMMENT, SAYING THAT ADDING NATIONAL TREATMENT PROVISIONS TO SECTION 2 WOULD BE A "BIG LOAD".

9. SPECIAL AND DIFFERENTIAL TREATMENT: BULK OF DISCUSSION WAS DEVOTED TO HOW WORK SHOULD PROCEED. EC, NORDICS, AND SWISS SUPPORTED U.S. OBJECTIVE TO DEVELOP ONE TEXT AS A BASIS FOR NEGOTIATION. CANADA AND US EXPRESSED WILLINGNESS TO USE THE NORDIC COMPROMISE TEXT AS SUCH A BASIS, BUT EC PREFERRED U.S. TEXT. MEXICO AND BRAZIL, THE ONLY LDC'S IN THE GROUP, DID NOT FAVOR THE IDEA OF DEVELOPING A NEW TEXT AND PREFERRED USING THE BRAZILIAN TEXT AS A BASIS FOR NEGOTIATION. BRAZIL AND MEXICO SUGGESTED THAT A REVIEW OF THE RECENTLY DISTRIBUTED INFORMAL CHECKLIST OF PROPOSALS LIMITED OFFICIAL USE

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FOR S&D IN THE STANDARDS CODE (DRAFTED BY WILLIAMS) WHICH GROUPS PROPOSAL BY TOPICS, WOULD BE BENEFICIAL. REST OF GROUP RELUCTANTLY AGREED, BUT MAINTAINED THAT TIME FOR SUCH GENERAL DISCUSSIONS WAS SHORT AND THAT SUBSTANTIVE DRAFTING HAD TO BE UNDERTAKEN IN THE NEAR FUTURE. REVIEW OF CHECKLIST REVEALED THAT POSITIONS ON SOME ISSUES WERE NOT FAR APART WHILE MAJOR DIFFERENCIES STILL EXIST ON CERTAIN KEY AREAS. THERE WAS ONLY A BRIEF DISCUSSION ON THE NORDIC PROPOSAL FOR THE STANDARDS COMMITTEE TO GRANT TIME LIMITED DEROGATIONS FOR LDC'S FROM SPECIFIC CODE OBLIGATIONS. MEXICO COMMENTED THAT, AS PRESENTLY DRAFTED, THE COMMITTEE WOULD HAVE TO BE IN PLACE BEFORE EXCEPTIONS COULD BE GRANTED. NORDICS RESPONDED THAT, ON THE BASIS OF AN

OPERATIONAL UNDERSTANDING DURING THE NEGOTIATIONS, DEROGATIONS COULD BE AGREED BEFORE CODE WAS ADOPTED. AS A RESULT OF THE REVIEW, THE GROUP AGREED THAT DELEGATIONS THAT HAD TABLED S&D PROPOSALS SHOULD MEET INFORMALLY BEFORE THE NEXT GROUP MEETING WITH A VIEW TO DEVELOP A SINGLE NEGOTIATING TEXT, OR AT LEAST FURTHER REVIEW THE GATT SECRETARIAT CHECKLIST.

10. FUTURE WORK: CHAIRMAN DISTRIBUTED AN INFORMAL LIST OF OUTSTANDING ISSUES FACING THE GROUP IN ORDER TO ASSIST THE GROUP PLAN ITS FUTURE WORK PROGRAM. THE GROUP AGREED TO MEET IN INFORMAL SESSIONS DURING THE WEEK OF MAY 22, WITH POSSIBLE FULL SUBGROUP MEETING THE WEEK OF MAY 29. PRINCIPAL ISSUES TO BE DISCUSSED AT INFORMAL PLURILATERAL SESSIONS INCLUDE D/S, S&D, EC AND NORDIC PROPOSALS. IN ADDITION, U.S. DEL IS EXPLORING POSSIBILITY OF BILATERAL SESSIONS WITH CANADA AND EC PRIOR TO NEXT INFORMAL GROUP MEETING. PURPOSE OF THESE BILATERALS WOULD BE LINE BY LINE EXAMINATION OF CODE TO DETERMINE WHAT DIFFERENCES REMAIN.

11. DRAFTED BY WALLAR. CULBERT
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Message Attributes

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